

COMMITTEE OF BAR EXAMINERS

OPEN SESSION AGENDA ITEM

AGENDA ITEM: January 2015 – O-400

DATE: January 22, 2015

TO: Subcommittee on Educational Standards

FROM: George Leal, Director, Educational Standards

SUBJECT: **Proposed Amendments to Guidelines for Accredited Law School Rules, Guidelines 12.1 and 12.2 (Minimum, Cumulative Bar Examination Pass Rate) – Return from Public Comment**

BACKGROUND

Effective January 1, 2013, California-accredited law schools (CALS) became subject to a new accreditation standard based upon a “minimum, cumulative bar examination pass rate” (MPR). As now required by Rule 4.160(M) of the *Accredited Law School Rules*, to remain accredited a CALS “must maintain a minimum, cumulative bar examination pass rate as determined and used by the Committee in the evaluation of the qualitative soundness a law school’s program of legal education.” To enforce this new standard, the Committee also amended the *Guidelines for Accredited Law School Rules* by adopting two new Guidelines: Guidelines 12.1 and 12.2.

Guideline 12.1 sets the current, minimum MPR at 40% and requires a CALS to calculate and report its respective rate as a rolling, five-year annual percentage. To calculate its respective MPR, a CALS is to divide the total number of its graduates who take and pass the California Bar Examination (CBX) during the preceding five-years, by the total number of graduates who took the CBX over the same five years at least once, whether or not they pass. Those who did not to take the CBX are not to be counted.

As adopted, Guideline 12.2 required the CALS to report their MPRs in its 2013 Annual Compliance Report and, as it further provided, if a CALS failed to report a compliant MPR of at least 40%, the Committee could then issue it a Notice of Noncompliance. A parenthetical narrative to Guideline 12.2 also noted that any CALS that did not report a compliant MPR in its 2016 Annual Compliance Report, it could be placed on probation. If placed on probation, and if it thereafter failed to meet the terms of its probation by the end of 2017, any such CALS would be subject to the loss of its accreditation.

The primary goal in adopting a MPR was to have the CALS calculate and report metrics that would be accurate, verifiable and consistent among all of the CALS. Soon after Guidelines 12.1 and 12.2 were adopted, however, the Deans of several CALS expressed concern that the methodology described in Guideline 12.1 was unclear and ambiguous and that it failed to define which CBX administrations and which eligible

graduates should be used to calculate a compliant MPR. As a result, they believed that, as adopted, Guideline 12.1 would produce inaccurate and inconsistent reporting by one or more CALS. To address these concerns, the Committee deferred implementation of both Guidelines and it suspended the reporting obligation for each CALS to report its MPR in its 2013 Annual Compliance Report so that appropriate amendments to Guideline 12.1 and Guideline 12.2 could be developed and adopted.

In response, the Committee's Advisory Committee on California Accredited Law School Rules (RAC) then proposed amendments that were thought to eliminate the confusion of which CBX administrations and graduates should be used to calculate an accurate MPR. The Committee considered the proposed amendments during its meeting in March of 2014 and, after a period of public comment, it adopted both amended Guidelines, effective April 26, 2014.

As adopted, CALS were to calculate and report their MPRs on a form to be prepared by the Committee's staff so that they could report by July 1, 2014. During the process of drafting the Committee's form, however, it was discovered that, as amended, Guideline 12.1 still described a methodology that was inherently inconsistent and unworkable. The primary problem was in a "reporting period starts with the July administration of the California Bar Examination in the first year and ends with the February administration of the California Bar Examination in the same calendar year in which a MPR is reported."

In the hope of devising a workable and consistent methodology, staff worked closely with the Chair of the RAC, Dean Heather Georgakis, to prepare a final set of proposed amendments to Guideline 12.1 that would provide a workable methodology. The proposed methodology sought to eliminate all confusion and ambiguity by precisely defining both the time parameters of each "reporting period," the precise dates of all CBX administrations to be used and a clear explanation of those graduates who must be considered "qualified takers" to calculate the accurate and consistent verifiable MPR. The proposed methodology required the CALS to count only those graduates who both graduated and took any administration of the CBX, pass or fail, over the five years preceding each calendar year a CALS was to report its MPR. Only eligible graduates and the results of the CBX administrations during the reporting period were to be used.

When the proposed amendments to Guidelines 12.1 and 12.2 were submitted to the RAC for consideration at its June 2014 meeting, RAC member Dean Patrick Piggott of Humphreys College School of Law and Dean Jane Gamp of San Francisco Law School (who is not a member of RAC) objected to the methodology devised by staff and Dean Georgakis as being too strict an interpretation of the MPR accreditation standard. They believed that, as proposed, amended Guideline 12.1 would offer the last class of CALS graduates counted in each reporting period only one opportunity to take and pass the CBX. In its place, Deans Piggott and Gamp suggested a "flexible" approach that would give all such graduates an additional opportunity to take and pass the CBX by allowing the results of one additional administration to be used to calculate a compliant MPR.

Referred to as the "flexible approach," the Deans' method would allow graduates who graduate within a reporting period to take both the final July administration in a reporting period (the last of 10) and the February CBX administration given after the close of each

five-year reporting period. Under this proposal, while a total of 11 CBX administrations for each five-year reporting period could be used to calculate a compliant MPR, any graduate who passes must do so within the first 10 administrations after they graduate.

The Committee determined that a pilot program should be conducted to determine which method might work best. Two different reporting forms were prepared, one using the stricter approach and another which embodied the “flexible” approach suggested by the Deans. Both forms were then sent out with a request that the CALS calculate and report their respective MPRs using both methodologies to the Committee, confidentially, on or before September 15, 2014.

The CALS submitted both MPR reporting forms and their confidential results were reported to the Committee during the closed agenda of its meeting on October 18, 2014. During the open agenda of the same meeting, the Committee received a report on the pilot program and the difference in the MPR calculations using each methodology. As reported, there was small a but significant five percent average increase between the two, with an overall CALS average 54% MPR using the stricter method and a 59% average using the “flexible” method. The Committee approved in principle the “flexible” methodology and directed that the appropriate revisions to the language of the guideline that would effectuate this methodology be circulated for public comment.

Attachment A, contains the proposed amendments to Guidelines 12.1 and 12.2 that were published for public comment, with one small modification. The minor deletion was to the parenthetical narrative following Guideline 12.2 that related to the initial MPR reporting deadline of July 2014; as such this language is now superfluous and is no longer needed.

DISCUSSION

No public comments were received relating to the Committee’s adoption of the proposed further amendments to either Guideline 12.1 or 12.2.

RECOMMENDATION

It is recommended that the Subcommittee recommend to the full Committee that, following a public comment period in which no public comments were received, Guidelines 12.1 and 12.2 of the *Guidelines for Accredited Law School Rules*, as amended, be adopted and become effective as of the date of the Committee’s action.

PROPOSED MOTION

If the Subcommittee agrees, the following motion is suggested:

Move that the proposed amendments to Guidelines 12.1 and 12.2 of the *Guidelines for Accredited Law School Rules*, as attached hereto, be adopted, effective as of the date of the Committee’s action.